

The Honorable Ricardo Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RUSSEL H. DAWSON, Personal
Representative of the Estate of Damaris
Rodriguez; REYNALDO GIL; JOSE MARTE,
A.G.; I.G., S.G. and D.G.,

Plaintiffs,

v.

SOUTH CORRECTIONAL ENTITY
("SCORE"), a Governmental Administrative
Agency; PENNY BARLEY; JIM KELLY;
TODD BARKER; BRITTNEY PALMORE;
BRANDON HEATH; PEDRO SANTOS;
MANDI JARAMILLO; WILLIAM WOO;
BENDA SCOTT a/k/a BRENDA SCOTT;
ETHAN GLOVER; CHRISTOPHER FOY;
JANE DORE; COLMINTON ALLEN;
AARON SEIPP; SCORE JOHN DOES 1-10;
NAPHCARE, INC., an Alabama Corporation;
REBECCA VILLACORTA; HENRY TAMBE;
NANCY WHITNEY; BILLIE STOCKTON;
BRITTANY MARTIN; JESSICA LOTHROP;
BROOKE WALLACE; SALLY MUKWANA;
JOAN KOSANKE; RITA WHITMAN;
VIRGINIA RICHARDSON; NAPHCARE
JOHN DOES 1-10; KING COUNTY, a political
subdivision of the State of Washington; RAUL
ADAMS; LELAND ADAMS; ALAN TAG,

Defendants.

No. 2:19-cv-01987-RSM

**STIPULATION AND ORDER
RESETTING TRIAL AND
ASSOCIATED FILING DATES**

NOTE ON MOTION CALENDAR:
September 22, 2021

STIPULATION

COME NOW the parties, by and through their respective counsel of record, who have
conferred and hereby stipulate to an extension of the current trial date and the filing deadlines

STIPULATION AND ORDER RESETTING TRIAL AND
ASSOCIATED FILING DATES - 1

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for all trial-related pleadings as set by the Court's *Order Setting Trial Date and Related Dates* (Dkt. No. 40), and recently amended by the *Stipulation and Order Extending Case Schedule* (Dkt. No. 194), as follows:

	Current Deadline	Stipulated Deadline
Motions in Limine	October 11, 2021	January 4, 2022
Agreed PreTrial Order	October 18, 2021	January 11, 2022
Pretrial Conference	To Be Scheduled	To Be Scheduled
Deadline for Filing Trial Briefs, Proposed Voir Dire, Jury Instructions, Neutral Statement of the Case, Trial Exhibits	November 5, 2021	January 28, 2022
Jury Trial	November 29, 2021	February 22, 2022

A. Local Rule 16(b)(5) Allows Modification of a Scheduling Order on Good Cause

The federal and local rules allow for modification of the dates in a scheduling order for good cause and with the judge's consent. Fed. R. Civ. P. 16(b)(4), Local Rules W.D. Wash LCR 16(b)(6) (*see also* Dkt. #40 - Sched. Order at 2) ("These are firm dates that can be changed only by order of the Court, not by agreement of counsel or the parties. The Court will alter these dates only upon good cause shown; failure to complete discovery within the time allowed is not recognized as good cause.").

"Rule 16(b) 'primarily considers the diligence of the party seeking the extension.'" *Roosma v. Pierce Cty.*, No. 3:16-cv-05499-RJB, 2017 U.S. Dist. LEXIS 189893, at *7-8 (W.D. Wash. Nov. 16, 2017) (citing *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992)). "Although 'prejudice to the party opposing the modification [of a scheduling order] might supply additional reasons to deny a motion, the focus . . . is upon the moving party's reasons for seeking modification.'" *Id.*

B. The parties' diligence and the impact of ruling on pending motions for trial preparation are good cause for a continuance of this case.

The parties have shown diligence in litigating this case. They have conducted extensive discovery, including multiple depositions per-day. They have also entered into stipulations and

1 agreements as much as possible given their respective positions. Finally, the parties have
 2 sought to streamline trial by seeking pretrial rulings on issues of law.

3 However, this remains a fact intensive case, and the following motions remain currently
 4 pending before the Court:

- 5 a. Plaintiffs' Partial Motion for Summary Judgment on Vicarious Liability
 6 and Comparative Fault (Dkt. No. 106);
- 7 b. Plaintiffs' Partial Motion for Summary Judgment on NaphCare's Tort
 8 Liability (Dkt. No. 153);
- 9 c. The NaphCare Defendants' Motion to Strike (in re Carl Wigren, M.D.)
 10 (Dkt. No. 151);
- 11 d. Plaintiffs' Motion to Strike (in re NaphCare experts) (Dkt. 181); and,
- 12 e. The SCORE Defendants' Motion for Summary Judgment (Dkt. No.
 13 145). The SCORE defendants' motion, which was noted on the Court's
 14 Motion Calendar for August 13, 2020, has since been postponed by
 15 stipulation of the parties (Dkt. No. 164) pending the Court's
 16 determination on the sufficiency of the partial compromise reached
 17 between plaintiffs and SCORE. Although the Court issued its order
 18 approving Plaintiffs' Petition to Approve Partial Compromise with
 19 SCORE (Dkt. 199) on September 20, 2021, SCORE has not yet renoted
 20 its Motion.

21 The Court's rulings on each of the pending motions will directly impact the parties'
 22 trial preparation and presentation because the rulings and findings will determine what parties,
 23 claims, and witnesses will be presented to the jury. Each of these rulings requires a different
 24 analysis and corresponding litigation strategy for each of the parties. Put another way, without
 25 rulings by the Court, the parties will need to prepare for trial with a multitude of possible
 26 permutations and file motions in limine that account for all possible scenarios. Extending the
 27

1 deadlines in this case will conserve resources for the parties while the motions are pending.
2 Extending the deadlines will also conserve judicial resources, as the parties will not be forced
3 to present pretrial motions that are contingent on the outcome of the motions.

4 The parties have diligently litigated this case and agree that resetting the trial is
5 necessary to ensure sufficient time to adequately prepare once the Court rules on the pending
6 motions.

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STIPULATION AND ORDER RESETTING TRIAL AND
ASSOCIATED FILING DATES - 4

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IT IS HERBY STIPULATED AND AGREED by the parties that the trial date and filing deadlines for trial pleadings, be extended as set forth above.

RESPECTFULLY SUBMITTED the 22nd day of September, 2021.

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Attorneys for the NaphCare Defendants

ORDER

IT IS HEREBY ORDERED that, based on the stipulation of the parties, that Court's Order Setting Trial Date and Related Dates (ECF No. 40) is amended as set forth above.

DATED this 22nd day of September, 2021.



RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the below date, I caused to be electronically filed the foregoing document with the Clerk of the Court using the eFiling system, which will send notification of such filing to the following:

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Signed at Portland, Oregon this 22nd day of September, 2021.

/s/ Heidi L. Mandt

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***Attorneys for Defendants NaphCare, Inc.,
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and Rita Whitman***